उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(51)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRI. A. NO. 227 OF 2004

Appellant (In jail since 19.01.01)		Milandas, S/o Sonaudas Mahant, aged about 22 years, Driver R/o Champa, Thana Champa Distt. Janjgir-Champa (C.G.)
	Vs	
Respondent		State of Chhattisgarh Through Police Station Champa, Distt Janjgir-Champa (C.G.)

And

CRI. A. NO. 258 OF 2004

Appellant (In jail)		Amit Kumar @ Anil Singh S/o Surendra Singh Aged about 22 years, R/o Village Bara, Post-Katiya Kapri P.S. Khijar sarai Distt Gaya Bihar.
	Vs	
Respondent		State of Chhattisgarh Through-P. S. Janjgir, Distt. Janjgir-Champa (C.G.)

Mr. Yogeshwar Sharma, counsel for the appellant in Cr.A.No. 227/04.
Mr. R.K. Jain, counsel for the appellant in Cr.A.No.258/04.
Mr. G.S. Ahluwalia, counsel for the complainant in Cr.A.No258/04.
Mr. Neeraj Mehta, P.L. for the State/respondent.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश २	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

ORAL JUDGMENT
(10.08.2007)

Dhirendra Mishra, J

Since both these appeals are directed against the judgment of conviction and order of sentence dated 28th February 2004 in Sessions Trial No. 166/2001 whereby learned II Additional Sessions Judge (F.T.C.), Janjgir, Bilaspur (C.G.) has convicted the appellants under Section 395 of the IPC and sentenced each of them to undergo R.I. for ten years, with no remission clause and also imposed a fine of Rs.200/-, they are being disposed of by this common judgment.

2. Case of the prosecution in brief is that Virendra Kumar (PW-1) lodged a report (Ex.P/1) in Police Station Janjgir at about 3.30 a.m. on 18.1.2001 mentioning therein that a sum of Rs.4,03,000/-, a cordless telephone valued at Rs.5,800/- have been robbed from the office of excise contractor Bhatia Company on the gun point. According to the FIR the complainant and other employees of the Company were sleeping inside the office, at that time one unknown person called and woke him up at about 3.00 in the night and on enquiry, he said that he is coming from Bilaspur, whereupon he opened the door. However, two others followed him

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश ३	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	inside the room. He provided them clothing on their demand. At the same time one of them all of a sudden took out country made pistol (Katta), put it on his temple and asked for key of the Almirah. He gave key on his demand. In the meanwhile, they became four in number, two out of them were holding Katta and they all woke up the employees who were sleeping on the divan and compelled them to go under the divan. Thereafter, they went in his room, took out the bundles of notes kept in the Almirah along with cordless telephone and kept it in a bag. Before fleeing they confined them in another room, however, as the door of the room was not latched from outside, they came out of the room immediately and raised alarm. They saw that the accused persons were standing near a jeep stationed at a distance of some 15-20 ft. away from their office near lovely STD/PCO and the jeep was not starting, therefore, all the four dacoits started running towards the nearby lane. On hearing the shouts of the employees some constables also reached there and they all went near the jeep and apprehended driver Milandas and helper Vinod Kumar. Both driver and the helper were sent along with police constables and other employees to police station and the complainant went inside to ascertain the amount of dacoity. He further stated that	

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश ५	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	the person who had put Katta against him was a thin person of wheatish complexion of about 5'7" height. The another dacoit who was also holding Katta, was about 5'8" tall and the third dacoit was of 5'2" and the fourth one was about 5'6". All of them were between the age group of 22-25 years. On the basis of above report offence under Section 395 of the IPC and 25 of the Arms Act was registered. On the same day appellant Amit was arrested from Nailaroad who was identified by the complainant and other witness Satyanarayan (PW-15). One jeep, a packet containing Rs.2,56,475/- having stickers of ASB on each bundles, one school bag containing wearing apparels, another bag containing other things, Dr. S.A. Ansari's prescription slip dated 1.1.2000 in which name of Amit Kumar is mentioned as a patient and also four tickets of Delux Coach Bus were seized from the appellant Milandas vide Ex.P/14. Accused Dharmendra was arrested on 16.2.2001. Identification parade was conducted on 10.4.2001 by Executive Magistrate P.K. Gupta, in which witnesses Virendra Kumar (PW-1) correctly identified accused Dharmendra Singh vide identification memo of Ex.P/2. However, accused Dharmendra was released on bail and thereafter, he did not appear before the trial Court and	

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मामला क्रमांक..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

was declared absconding. It was stated that accused Vinod Kumar has died during pendency of this appeal.

3. After completing the investigation charge sheet was filed against the four accused persons including accused Vinod Kumar and Dharmendra Singh.

4. Learned counsel for the appellants submitted that conviction of the appellants is based on the statements of complainant Virendra Kumar (PW-1) and Satyanarayan (PW-15) who are witnesses of the incident and have identified the appellants during trial as also on the alleged recovery of robbed amount from the custody of appellant Milandas.

5. Learned counsel for the appellants argued that a false case has been foisted on the appellants because of business rivalry between the two groups engaged in the business of liquor. Referring to the FIR of Ex.P/1 it was vehemently argued that as per case of the prosecution accused Milan and Vinod Kumar were immediately apprehended in front of office of the complainant by the police and employees of the office. They were sent to police station and the report was lodged in their presence. It is also evident from the case of the prosecution that the looted sum was recovered from

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 6	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

them immediately after the incident. However, the fact of recovery of the said amount is missing in the FIR. It was argued that from perusal of the FIR itself the case of the prosecution is that before the complaint was lodged, appellant Milan and accused Vinod Kumar were present in the police station, however, not mentioning the recovery of any amount from their custody throws serious doubt upon the veracity and genuineness of the prosecution case. It was further contended that appellant Amit Kumar has not been named in the FIR though he was arrested on the same day. However, he was not put to test identification and conviction is based on the dock identification as stated by the complainant and Satyanarayan (PW-15). Referring to the statements of the complainant it has been argued that in the FIR it has been alleged that height of the person who was holding Katta against him was 5'7" and other one was 5'8" tall, however, from perusal of the arrest memo height of accused Amit has been shown as 5'2", therefore, dock identification of Amit by the complainant Virendra Kumar becomes doubtful.

6. Conviction is also based on the recovery of prescription slip of article 'P' which is allegedly recovered from a bag from the jeep and which bears name of the appellant Amit @ Anil. It is argued that

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 7	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	simply because of recovery of the above document from the jeep, appellant Amit Kumar cannot be connected with the crime in question in the absence of any positive evidence to the fact that the said slip was in fact belonging to appellant Amit as the doctor issuing the said prescription has not been examined by the prosecution as a witness. Even the contents of article 'E' i.e. envelope, have not been specifically deposed by the investigating officer or the witnesses of seizure. The complainant in the paragraph 10 of his statement has stated that managers of the office Satyanarayan, Brajesh, Deepak Jaina, Amlesh etc while returning from Naila Railway Station spotted a boy, brought him near the office and he identified the boy as the boy who was holding pistol and the boy namely Amit @ Anil Singh present in the Court is the same boy he identified on that day. In paragraph 18 of his evidence he has stated that the said boy was taken to the police station by the mangers and thereafter, he went to lodge the report. He has also stated in paragraph 21 that when he went to lodge the report in the police station, the boy was already present there. Extensively referring to the statement of this witness it has been argued that name of appellant Amit is not mentioned in the FIR though the complainant claims that appellant Amit was already	

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

apprehended and brought to the police station even before lodging of the report.

7. PW-15 Satyanarayan has also claimed that immediately after the incident the driver and the helper of the jeep were apprehended by the employees of the office and police constables and from their custody a part of the robbed sum was recovered and thereafter, they went in search of other accused persons to railway station and apprehended appellant Amit while returning from the station. In these circumstances, absence of the fact of recovery of part of the robbed amount in the FIR makes the statements of these two witnesses Virendra Kumar (PW-1) and Satyanarayan (PW-15) doubtful and therefore, on the basis of their statements the appellants cannot be convicted.

8. On the other hand, learned counsel for the State/respondent supported impugned judgment of the trial Court and submitted that appellant Milan and accused Vinod were immediately apprehended after the incident and from their possession more than Rs.2 lakh and looted articles from the jeep were recovered. There is no explanation from the accused persons as to what they were doing at the late hours of night near the place of incident. The recovery of medical prescription of

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 9	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

appellant Amit from the jeep also establishes his involvement in the crime.

9. I have heard learned counsel for the respective parties and perused the material available on record including the impugned judgment.

10. Learned trial Court has based the conviction of the appellant basically on the statement of PW-1 Virendra Kumar whose version has already been reiterated in the earlier paragraphs. His statement is corroborated by the statement of Satyanarayan (PW-15). On the basis of visitors' register of article 'C' of Ashok Lodge where the appellant Amit stayed with other accused persons Dharmendra Singh, it has been held that the accused persons stayed at the lodge on 16.1.2001 and they left the lodge in the night. However, learned trial Court has overlooked the material discrepancy present in the prosecution case regarding absence of the fact that in the FIR of Ex.P/1 given by the complaint about recovery of rupees two lakh and odd amount from a bag kept in the jeep from the custody of appellant Milan though from the report itself it is evident that the same was lodged after appellant Milan and accused Vinod were apprehended along with the jeep and report was recorded in their presence in the police station. This is

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

material omission which creates doubt upon the veracity of the complaint itself.

11. The alleged eyewitness Virendra Kumar and Satyanarayan did not recognize Amit since before. However, the prosecution for the reasons best known to it, did not conduct any identification of this accused, which makes the dock identification of this accused during trial doubtful. The discrepancy pointed out in the statements of these witnesses goes to the root of the mater and the same creates serious doubt about reliability of these two witnesses. The absence of the fact that the robbed amount recovered from the jeep from the custody of appellant Milan in FIR, makes the alleged recovery itself highly doubtful. Therefore, in the considered opinion of this Court, the Court below was not justified in convicting appellant Milan on the basis of alleged recovery of cash amount from the jeep from his custody and was also not justified in convicting the appellant Amit on the basis of dock identification during trial by PW-1 Virendra Kumar and PW-15 Satyanarayan.

12. In the result, appeal preferred by the appellants deserves to be allowed and accordingly, it is allowed. Their conviction under Section 395 of IPC and sentenced passed thereon, are set aside. They are

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	acquitted of the above charge. They be set at liberty forthwith if not required in any other case. 13. Heard on I.A.No.1, an application under Section 452 read with Section 386 (e) of the Cr.P.C. for custody and disposal of the property at the conclusion of trial. 14. This application has been preferred by the complainant for releasing the looted seized property of Rs.2,56,475/- in favour of the complainant after conclusion of the trial. 15. Learned counsel for the complainant submits that the trial Court has erroneously not passed any order with respect to disposal of the seized property under Section 452 of the Cr.P.C. on the pretext that other accused persons are absconding. From perusal of the charge sheet itself it would be evident that as per case of the prosecution the property in question belongs to the complainant which was seized from appellant Milan from his jeep, therefore, there is no impediment in handing over the said property to the complainant and the reasons assigned for not passing any order with respect to disposal of the property is not proper. 16. From perusal of record of the trial Court it is observed that accused Dharmendra Singh absconded	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 12	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आंदेश
	after being released on bail and permanent warrant of arrest was issued against him and other two accused persons are also absconding and as and when they are arrested *de novo trial* will be conducted against them, therefore, the reasons assigned by the trial Court for not passing any order under Section 452 of the Cr.P.C. for disposal of the property appears to be proper. Even otherwise, before passing any order under Section 452 of the Cr.P.C. an enquiry would be necessary for affording an opportunity of hearing to all the concerned and as such, it would not be appropriate to pass any order on the application for disposal of property of the complainant at this stage. 17. Accordingly, the application {I.A.No.1/07} is rejected. **Sd/-** **Dhirendra Mishra** **Judge**	

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